

Zachary M. Schwartz, Esq. (SBN 286498)
Kiran S. Idrees, Esq. (SBN 349485)
Koeller, Nebeker, Carlson & Haluck, LLP
3 Park Plaza, Suite 1500
Irvine, CA 92614-8558
949-864-3400; fax: 949-864-9000
Email: zachary.schwartz@knchlaw.com
kiran.idrees@knchlaw.com

Attorneys for Defendants,
COUNTY OF ORANGE, PAULINA
VELASQUEZ, ANDY NGUYEN, FRANCINA
ANDERSON, ELIZABETH MOUA, BRITTANY
CHAMBLESS. NORMA AVILA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ASHLEY CORNELIA SCHMITT, an
individual,

Plaintiff,

v.

ORANGE COUNTY CALIFORNIA, a
County Government, and MICHELLE
TOLOSA, an individual; PAULINA
VELASQUEZ; an individual; ANDY
NGUYEN, an individual; FRANCINA
ANDERSON, an individual; CHAU
DO-AZNAUR, an individual; MARY
DO-AZNAUR, an individual;
ELIZABETH MOUA, an individual;
BRITTNEY CHAMBLESS, an
individual; NORMA AVILA, an
individual; and DOES 1 through 20
inclusive,

Defendants.

Case No.: 8:23-cv-01321-JFW (DTB)
Assigned to: Hon. John F. Walter
Crt. Rm: 7A
Magistrate: David T. Bristow
Crt. Rm: 4

**DEFENDANTS COUNTY OF
ORANGE, PAULINA
VELASQUEZ, ANDY NGUYEN,
FRANCINA ANDERSON,
ELIZABETH MOUA, BRITTANY
CHAMBLESS, AND NORMA
AVILA'S NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT [FRCP 12(b)(6)]**
*Filed concurrently with Memo of
Points and Authorities; Declaration of
Kiran Idrees; Proposed Order*

DATE: March 14, 2024
TIME: 10:00 AM
CRT RM: 4

Action Date: 7/21/23
Trial Date: N/A

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

1 **PLEASE TAKE NOTICE** that on March 14, 2024 at 10:00 AM in
 2 Courtroom 6A of the above entitled court located at the George E. Brown, Jr.
 3 United States Courthouse, 3470 12th Street, 3rd Floor, Courtroom 4, Riverside, CA
 4 92501, Defendants COUNTY OF ORANGE, PAULINA VELASQUEZ, ANDY
 5 NGUYEN, FRANCINA ANDERSON, ELIZABETH MOUA, BRITTANY
 6 CHAMBLESS, and NORMA AVILA (collectively “County Defendants”) will and
 7 hereby move this Court pursuant to Federal Rule of Civil Procedure (FRCP)
 8 12(b)(6) to dismiss Plaintiff ASHLEY CORNELIA SCHMITT’s First Amended
 9 Complaint (“FAC”) for failure to state a claim.

10 In particular, the Defendants move to dismiss the following claims for relief
 11 and causes of action on the following grounds:

12 1. The first claim is barred by the two-year statute of limitations and also
 13 fails to allege sufficient facts to state a plausible claim under 42 U.S.C. § 1983
 14 against the County pursuant to *Monell* for violation of the plaintiff’s Procedural
 15 Due Process rights based upon alleged failure to enforce or train by the County of
 16 Orange.

17 2. The second claim is barred by the two-year statute of limitations and
 18 also fails to allege sufficient facts against the County of Orange to state a plausible
 19 §1983 claim for deprivation of a parent-child relationship in violation of the 14th
 20 Amendment for the alleged failure to enforce or train county social workers.

21 3. The third claim for violation procedural due process based upon
 22 removal of Plaintiff’s daughter is barred by the two-year statute of limitations.

23 4. The fourth claim for unlawful interference with Plaintiff’s child
 24 relationship is barred by the two-year statute of limitations.

25 5. The fifth claim for violation of the *Civil Code* section 51 is barred by
 26 the applicable one-year statute of limitations and also fails to state sufficient facts to
 27 state a plausible claim against Defendants because they are not a business
 28

1 establishment.

2 6. The sixth claim for negligence is barred by the applicable two-year
3 statute of limitations and also fails to state a plausible claim against the Defendants
4 because social workers are entitled to immunity under *Government Code* sections
5 820.2 and 821.6.

6 7. The seventh claim for misrepresentation and actual fraud under *Civil*
7 *Code* section 1572 is barred by the applicable two-year statute of limitations and
8 also fails to state a plausible claim because it fails to allege with particularity the
9 alleged misrepresentations and circumstances of fraud and does not meet the
10 applicable heightened pleading standard.

11 8. The eight claim for liability against the County under *Government*
12 *Code* sections 815.2(a) and 815.6 are barred by the applicable statute of limitations
13 and also fail to state a plausible claim against the County because the County is
14 entitled to the same immunity as the social worker defendants under *Government*
15 *Code* section 815.2(b), and County cannot be directly liable under *Civil Code*
16 section 51 because it does not apply.

17 This Motion is based on this Notice of Motion and Motion, the Memorandum
18 of Points and Authorities, the Declaration of Kiran Idrees, the pleadings and papers
19 on file with this Court, as well as on such oral or documentary evidence as may be
20 presented at the hearing on this motion.

21 Counsel for Defendants attempted to meet and confer under L.R. 7-3,
22 however, for the reasons stated in the Declaration of Kiran Idrees, a conference was
23 unable to be completed and no resolution was reached to avoid this Motion.

1 DATED: February 8, 2024

Koeller, Nebeker, Carlson & Haluck, LLP

2 /s/ Zachary M. Schwartz

3 Zachary M. Schwartz, Esq.
4 Attorneys for Defendants,
COUNTY OF ORANGE, PAULINA
5 VELASQUEZ, ANDY NGUYEN,
FRANCINA ANDERSON, ELIZABETH
6 MOUA, BRITTANY CHAMBLESS, AND
NORMA AVILA
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

I, Connie B. Reinglass, declare that:

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 3 Park Plaza, Suite 1500, Irvine, California 92614-8558.

On **February 8, 2024**, I served the foregoing document, described **DEFENDANTS COUNTY OF ORANGE, PAULINA VELASQUEZ, ANDY NGUYEN, FRANCINA ANDERSON, ELIZABETH MOUA, BRITTANY CHAMBLESS, AND NORMA AVILA'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT [FRCP 12(b)(6)]** on the interested parties in this action by placing ☐ the original ☐ a true copy in a separate sealed envelope addressed to the following addresses:

Ashley Cornelia Schmitt 12913 Harbor Blvd., Ste. Q-3 Garden Grove, CA 92840 (562) 794-3536	Plaintiff Pro Se
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☐ **BY E-MAIL:** I caused the above-described document(s) to be transmitted to the offices of the interested parties at the e-mail addresses indicated.

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY ELECTRONIC TRANSFER TO THE CM/ECF SYSTEM:** On this date, I electronically uploaded a true and correct copy in Adobe "pdf" format the above listed document(s) to the United States District Court's Case Management and Electronic Case Filing (CM/ECF) system. After the electronic filing of a document, service is deemed complete upon receipt of the Notice of Electronic Filing ("NEF") by the registered CM/ECF users.

☐ **BY EXPRESS MAIL OR "ANOTHER METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY":** I deposited such envelope in a box or other facility regularly maintained by the express service carrier at Irvine, California. The envelope was deposited with delivery fees provided for on a fully prepaid basis.

1 ☐ **BY FACSIMILE TRANSMISSION:** This document was transmitted
2 by facsimile transmission and such transmission was reported as complete and
3 without error. The transmission report that was properly issued by
the transmitting facsimile machine is attached to the conformed file copy of this
document.

4 ☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be hand-
5 delivered to the office(s) of the addressee(s).

6 I DECLARE under penalty of perjury under the laws of the United States
7 that the above is true and correct. I further declare that I am employed in the
office of a member of the bar of this court at whose direction the service was
made.

8 Executed on **February 8, 2024**, at Irvine, California.

9
10 /s/ Connie B. Reinglass
Connie B. Reinglass